

PT 99-60

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

WOMANSPACE, INC.)	Docket #	97-101-17
Applicant)	A.H. Docket #	98-PT-0028
)		
v.)	Parcel Index #	153B-210D
)		
)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mary P. Gorman, O'Brien, Healy, Wade, Gorman & Zuba, Attorneys at Law for Womanspace, Inc.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, (hereinafter referred to as the "Department") Springfield, Illinois on August 13, 1998, to determine whether or not Winnebago County Parcel Index No. 153B-210D qualified for exemption during the 1997 assessment year.

Dorothy C. Bock, Program Director, and Elaine M. Hirschenberger, Administrative Director of Womanspace, Inc., (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel

during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for charitable exempt purposes during the assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during all of the 1997 year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant used the parcel for charitable purposes during the entire 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that a portion of Winnebago County Parcel Index No. 153B-201D did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 12)

2. On September 25, 1997, the Department received a property tax exemption application from the Winnebago County Board of Review for Permanent Parcel Index No. 153B-210D. The applicant had submitted the request and the board recommended granting the exemption for the 1997 assessment year. The Department assigned Docket No. 97-101-0028 to the application. (Dept. Grp. Ex. No. 2)

3. On February 26, 1998, the Department denied in part and granted in part the requested exemption application, finding that the property was: "EXEMPT, EXCEPT 36% OF BLDG 2 & SITE USED FOR THE ART GALLERY & UNUSED SPACE IS TAXABLE. (PROPERTY NOT IN EXEMPT USE)". (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the portion that was not granted the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on August 13, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject property from the School Sisters of St. Francis of St. Joseph Convent, Milwaukee, Inc. by a Corporation Warranty Deed dated May 8, 1996. The deed has Parcel Index No. as 153B-210A rather than 153B-210D. The street address of the subject parcel is 3333 Maria Linden Drive, Rockford, Illinois. (Dept. Ex. No. 2 pp. 5-8)

7 Located on the subject parcel are two buildings. Building No. 1, which is not at issue, contains 3,058 square feet and is a one-story building with a basement that is used by the applicant as a convent, meeting room, and for counseling. Building No. 2 is a one-story building with a basement. The building is 1,184 square feet and contains a teaching studio, classroom, and a gallery. The applicant, in its protest, stated that it was confused by the language of the partial denial as to what specific part and percentage of the property was not in exempt use. The 308 square-foot gallery and the 120 square-foot area of the property that the applicant marked as “future” on the diagram submitted with the application comprise 36% of building No. 2. That is the area that was not exempted. (Dept. Ex. No. 2 p. 13; Dept. Ex. Nos. 3 & 4)

8. The diagram submitted with the application that the Department relied upon to deny the exemption of the two areas at issue was incorrect. The diagram represented the architect’s original drawing of building No. 2. The building was never built according to the architect’s specifications. The architectural drawing contained an undetermined space entitled “future”. At the hearing, the applicant submitted an overlay that contained the actual measurements of the areas at issue on the lower level of building No. 2, as well as pictures of those areas. The applicant realized that because the building was going to be used by persons of all different abilities it would be necessary to have a handicap accessible restroom and wider hallways than originally envisioned. The area marked “future”, therefore, became part of a handicap-accessible bathroom and part of the entrance to the furnace room. The original restroom was incorporated into the expanded hallways. The size of the 308 square foot gallery depicted on the architectural diagram is in fact 490.5 square feet. (Applicant’s Ex. Nos. 1 & 2;

Tr. pp. 14-19)

9. Building No. 2 on the subject parcel is known by the applicant as "New Dimensions". Regarding the 409.5 square foot art gallery, the applicant calls that area the "New Dimensions Studio and Gallery" (hereinafter referred to as the "Gallery"). The area is used to display the work of local and regional artists. The exhibits are open to the public at no charge. For the artist's work sold through the efforts of the gallery, the purchase price is paid to the applicant and a percentage, usually 60% to 75%, is transferred by the applicant to the artist. The 25-40% donation retained by the applicant is the commission and depends upon the type of exhibit and agreement with the artist. Other local galleries in the Rockford area routinely charge a 40% commission for works sold. (Dept. Ex. No. 2 p. 51; Tr. pp. 24-25, 46-48)

10. In 1997, the applicant had 65 exhibitors display work in the gallery. There were a total of six separate exhibitions¹. The gross sales from those exhibitions were \$7,522.00. The applicant earned a commission of \$2,479.00 for those sales. Some of the 65 artists exhibited works at more than one event. There were 52 individuals who exhibited their works in 1997. Of those 52 individuals, 23 are not members of the applicant and 29 are members. (Applicant's Ex. No. 3; Tr. p. 27)

11. The applicant had total revenue and support in the amount of \$138,438.02 for the fiscal year ending August 31, 1997. (Dept. Grp. Ex. No. 2 p. 41; Tr. pp. 28-30)

12. The applicant selects the artists that exhibit their work at the gallery. The applicant does not pay an artist to display their work. The content and form of the work must be in harmony with the philosophy of the applicant. Applicant selects artists whose work has

¹ The exhibitions in 1997 were: from January 10-February 28, 1997 the applicant hosted "The Garden Revisited"; from March 7- April 30, 1997, "Friends Coming of Age"; May 9- June 20, 1997, "WOMANSPACE Student Show"; July 18- August 22, 1997, "The Indigenous Traveler: Points in Between"; October 3- November 3, 1997, "Earth Rhythms"; and November 7- December 16, 1997, "Holiday Art Show".

become known, and artists who submit slides and a written request to exhibit in the gallery. The applicant does not discriminate on the basis of sex, creed, disability, race or national origin. Artists need not be affiliated with the applicant in any way in order to receive an invitation to exhibit. The choice is left to the artist whether they wish the exhibited items sold or used for display only. (Applicant's Ex. No. 3; Tr. pp. 21-24, 41)

13. The applicant advertises its shows in the local newspaper, distributes flyers, and advertises its shows through the Rockford Area Arts Council mailings. The applicant is a member of the Arts Council. On the opening day of a show, the applicant provides a table of hors d'oeuvres, other food, and refreshments for the visitors. The gallery is open Monday through Thursday from 8:30 a.m. to 4:30 p.m. It is also open on weekends and evenings by appointment. The applicant keeps a guest book that people who come to see the exhibit are asked to sign. There are no tours of the shows but often local schools send students to view the paintings and write papers about the art works there. (Tr. pp. 24, 27-28, 44-47)

14. The applicant did not rent the gallery in 1997. However, the School Sisters of St. Francis used the area six times in 1997 for meetings. There was no charge for the use of the area. A workshop for another group was also held in the gallery in 1997. There was no charge to the operators of the workshop for the use of the area. (Applicant's Ex. No. 4; Tr. pp. 31, 43-44)

15. The co-directors founded the applicant in August 1975. The co-directors are members of the School Sisters of St. Francis and are both practicing professional artists. The applicant was originally begun under the sponsorship of the School Sisters and became separately incorporated as a 501(c)(3) organization in September, 1977. The applicant is exempt from the payment of income tax pursuant to the Section 501(c)(3) designation granted by the Internal Revenue Service. (Dept. Grp. Ex. No. 2 pp. 48-49, 55; Tr. pp. 21, 32, 34-38)

16. The applicant was incorporated under the General Not-for-Profit Act on

September 12, 1977 for the following purpose:

To own, maintain and operate an educational and resource center, and to prescribe and regulate instructional programs; also to do all things necessary, proper, and desirable towards such ends and the promotion of the education of women.²

17. The mission statement of the applicant is that: "WOMANSPACE exists to provide creative learning opportunities for personal and spiritual growth, as well as networking and leadership experiences, for women who wish to enrich, redirect, or rebuild their lives." (Dept. Grp. Ex. No. 2 p. 55)

18. Womanspace began as a mission project of the School Sisters of St. Francis and has evolved to the programs that it offers today. It has programs in spirituality, psychological wellbeing, art, and creative development. Programs are offered in communication skills and understanding personality styles. Spiritual counseling and guidance, as well as retreats, are also offered. (Tr. pp. 39-41)

19. I take administrative notice of the fact that the Department granted a 100% exemption for building No. 1 and a 64% exemption for building No. 2 on the parcel at issue pursuant to the Docket No. at issue. Those areas contain a convent, meeting room, counseling offices, teaching rooms, and classrooms. (Dept. Ex. Nos. 2 & 3)

² The purpose clause goes on to state: In fulfilling these purposes, the corporation shall have the powers vested in it by governing law, these Articles of Incorporation and the Corporate by-laws, such as are consistent with the qualification for exemption for Federal and State income tax, particularly Section 501(c)(3) of the United States Internal Revenue Code. No part of the net earnings shall ever inure or be distributed to the benefit of any Director or Officer of the corporation and no pecuniary gain, either direct or indirect, shall inure to the benefit of any individual. Further, the corporation shall have the power to buy, own, lease, mortgage, exchange or dispose of any and all kinds of property, real, personal or mixed, to borrow and lend money, to do all the things necessary or incidental to the aforesaid purposes owning and operating an instructional program.

20. I also take administrative notice of the fact that the Department granted an exemption to the School Sisters of St. Francis pursuant to Docket No. 65-583 for approximately 68 acres located in Winnebago County. The subject parcel was part of that acreage. (Applicant's Ex. No. 9)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel.

Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[,]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has

effectuated this definition by observing that all "institutions of public charity" share the following

"distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they disperse charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home at 157.

The Department, in granting a partial exemption in this matter, has found that the applicant is a charitable organization. Therefore, the only issue before me is the use of the two portions of building No. 2 that are at issue.

I find that the applicant has established that the area that was marked as "future" on the architect's drawing is in fact a part of the hallway and handicap accessible restroom in building No. 2. I

therefore find that area qualified for exemption for the 1997 assessment year.

Regarding the gallery, the applicant realized income of \$2,479.00 from the gross sales of the gallery in 1997. This represents less than 2% of the total income for the fiscal year ending August 31, 1997. I find that the use of the gallery to display the art works of the students of the applicant as well as the displays of works that enhance and are in harmony with the philosophy of the applicant is a furtherance of the charitable goals and purposes of the applicant. I find that the commission realized from the sales of some of the paintings displayed in the gallery was incidental. I therefore recommend that the 490.5 square foot area of building No. 2 that is the applicant's gallery also be granted a property tax exemption for 1997.

For the aforementioned reasons, I recommend that Winnebago County Parcel Index No. 153B-210D be exempt from property tax for the entire 1997 assessment year.

Respectfully Submitted,

Barbara S. Rowe

Administrative Law Judge

April 12, 1999